Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	
Connect America Fund	WC Docket No. 10-90
ETC Annual Reports and Certifications	WC Docket No. 14-58
Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Petition of Shawnee Telephone Company and Moultrie Independent Telephone Company for Waiver of the FTTP Rule and the 90 Percent Rule in the CAF Rate-of-Return Order	

Petition for Waiver

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Summary

The Petitioners, Shawnee Telephone Company ("Shawnee Telephone") and Moultrie Independent Telephone Company ("MITC")[1] seek a waiver of the Commission's decisions in the *CAF Rate-of-Return Order* (1) to exclude census blocks served by fiber-to-the-premises (FTTP") technology from the support calculations (the "FTTP Rule") under the Alternative Connect America Cost Model ("A-CAM"); and (2) not to make an offer of model-based support to any rate-of-return carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in the relevant state, based on the June 2015 FCC Form 477 data (the "90 Percent Rule").

Despite the fact that the Commission's A-CAM-based support mechanism produces significant reductions in the Petitioners' support levels, Shawnee Telephone and MITC are willing to accept that reduction in their support in order to gain the benefits of predictability and administrative simplicity offered by the model-based mechanism. Under the framework of the *CAF Rate-of-Return Order*, however, the Petitioners will not be able to do so. Shawnee Telephone has built out fiber-to-the-premises ("FTTP") technology to a substantial majority of its customer locations. As such, the FTTP Rule produces dramatic and unsustainable reductions in Shawnee Telephone's model-based support. Similarly, while MITC has not deployed FTTP technology, it currently serves more than 90 percent of its customer locations with 10/1 broadband, making it ineligible for an offer of model-based support.[2]

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[1] Shawnee Telephone and MITC became affiliates on July 8, 2016, when Shawnee Telephone completed its acquisition of MITC following receipt of Commission approval.

[2] If the Commission were to waive the FTTP Rule alone, the 90 Percent Rule would likely also preclude Shawnee Telephone from receiving an offer of model-based support.

Special circumstances justify a deviation from the FTTP Rule and the 90 Percent Rule. Shawnee Telephone, having built out FTTP technology to the majority of its service area, is among the rate-of-return carriers most greatly and adversely affected by the FTTP Rule. By granting these waivers and allowing the Petitioners to adopt model-based support, Shawnee will be able to achieve immediately the Commission's long-standing goal of transitioning to incentive regulation, including forward-looking model-based federal support. At the same time, because the Petitioners' support would decrease under the A-CAM-based mechanism, these waivers would immediately create additional financial "headroom," freeing up millions of dollars in additional support for use by other model-electing carriers for which the A-CAM produces increased support. If the Commission's $150 million allocation of additional support for model-electing carriers is exhausted, the Petitioners' election of the model will partially ameliorate the effects.

These waivers would also serve the public interest. The Commission has long recognized the benefits of calculating high-cost support using forward-looking costs and the efficiency benefits of incentive-based mechanisms, and should therefore grant these waivers in order to allow the Petitioners to elect support based on that framework. Furthermore, as indicated above, a waiver in this case better effectuates the Commission's intent to redirect high-cost support to areas where broadband has not yet been built out, by enabling additional carriers that have not yet built out 10/1 broadband to elect the model-based mechanism and receive increased support. Given the expectation that rate-of-return carrier demand for support is likely to exceed the Commission's budget, the Commission should grant these waivers as a means of expeditiously and incrementally reducing that shortage.

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Petition for Waiver

Shawnee Telephone Company ("Shawnee Telephone") and Moultrie Independent Telephone Company ("MITC" and, together with Shawnee Telephone, the "Petitioners"), hereby request that the Commission waive its decisions in the *CAF Rate-of-Return Order* (1) to exclude census blocks from the offer of support based on the Alternative Connect America Cost Model ("A-CAM") where the incumbent local exchange carrier ("ILEC") is offering voice and broadband service that meets the Commission's minimum standards for the high cost program using fiber-to-the-premises ("FTTP") technology (the "FTTP Rule");[3] and not to offer model-based support to any carrier that has deployed broadband offering a speed of 10 Mbps downstream and 1 Mbps upstream ("10/1 broadband") to 90 percent or more of its eligible locations in the state, based on the June 2015 FCC Form 477 data.[4]

3 *Connect America Fund*, WC Docket No. 10-90, Report and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016), at ¶ 56.

4 *Id.* at ¶ 66.

Introduction and Background

Shawnee Telephone offers local and long distance voice and broadband Internet access services to residential and business customers over approximately 3,100 access lines in nine rural exchanges (Cave-in-Rock, Eddyville, Elizabethtown, Equality, Hicks, Leamington, Renshaw, Rosiclare and Simpson) in Gallatin, Hardin, Pope and Johnson and Saline Counties in southeastern Illinois. Since 2006, Shawnee Telephone has been working to upgrade customers in its exchanges to FTTP technology, using a combination of its own capital, including over $30 million in RUS loans, a Broadband Initiatives Program ("BIP") award of $7.35 million in grant and loan funding from the federal government, and $1 million in state matching funds for its "Southern Illinois Sustainable Broadband Transformation" project. By the end of 2016, virtually all of Shawnee Telephone's customers will be served via FTTP, consistent with the goals and objectives of the President, Congress, and this Commission to expand the availability of broadband.

On July 8, 2016, Shawnee Telephone completed its acquisition of MITC.[5] MITC provides local exchange service and exchange access service as an ILEC in a single rural exchange (the Lovington exchange) in Moultrie County in central Illinois, and offers 10/1 broadband to virtually all of its customer locations.

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[5] *See* Press Release, "Shawnee Communications Completes Acquisition of Moultrie Multicorp (June 21, 2016), *available at:* http://www.il-ita.com/files/9414/6662/7206/Shawnee_Press_Release.pdf; Public Notice, WC Docket No. 16-95, "Notice of Domestic Section 214 Authorizations Granted," DA 16-495 (rel. May 5, 2016). It is not clear how the Commission intends to apply its decision to require rate-of-return carriers to make a state-level election of model-based support, *CAF Rate-of-Return Order* at ¶ 65, in the case of two carriers that became affiliates after the adoption of the *CAF Rate-or-Return Order* but before offers of model-based support have been made.

On March 30, 2016, the Commission released its *CAF Rate-of-Return Order*, which adopted the A-CAM and provided rate-of-return carriers with a voluntary path to the model, while also adopting an alternative mechanism, CAF-Broadband Loop Support ("CAF-BLS"), which is based on historical support amounts, and provides additional Interstate Common Line Support ("ICLS") based on customer purchases of broadband-only loop services.[6] In the *CAF Rate-of-Return Order*, the Commission adopted the FTTP Rule to exclude census blocks where the ILEC is offering voice and broadband service meeting the Commission's minimum standards using FTTP or cable technology from A-CAM support calculations,[7] and the 90 Percent Rule, which denies an offer of model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state, based on its June 2015 FCC Form 477 data. These rules were adopted because the Commission found that ILECs with significant FTTP buildout or 10/1 broadband deployment should not gain a model-based support "windfall."[8]

Under the A-CAM, federal high-cost support for Shawnee Telephone and MITC would decrease significantly, whether census blocks served using FTTP are included or excluded from the support calculation, and even if the Commission waives the 90 Percent Rule.[9] In 2014, the projected amount of federal support, excluding CAF-ICC for

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[6] *CAF Rate-of-Return Order* at ¶¶ 36, 86.

[7] *Id.* at ¶ 56.

[8] *Id.* at ¶ 66.

[9] Because it appears that the Commission intends to apply these tests on a statewide basis, Shawnee Telephone and MITC are affected in different ways. MITC has not deployed FTTP technology, but serves virtually all of its customers with 10/1 broadband, according to the June 2015 Form 477 data. Shawnee Telephone has deployed FTTP to a majority of its customers, but the June 2015 Form 477 shows that its non-FTTP census

Shawnee Telephone was approximately $8.67 million and approximately $0.34 million for MITC.[10] In 2015 projected support increased to $10.1 million and $0.389 million, respectively, for a total of roughly $10.5 million.[11] Even under the Commission's calculations, after accounting for the budget control requirements of the *CAF Rate-of-Return Order*, the Petitioners' projected support remain around $10 million annually for the next several years.[12]

Under the Commission's illustrative results using ACAM 2.1, Shawnee Telephone and MITC would have experienced significant reductions in support. As shown below, under version 4.1, each company would see reductions in support, and the combined companies would receive only about $7.4 million in model-based support, a substantial reduction, *even if the Commission grants these waivers*.[13]

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blocks were not served by 10/1 broadband. If the Commission waives the FTTP Rule, then Shawnee Telephone (and the combined service territories of Shawnee Telephone Company and MITC) could exceed that 90 percent threshold, making them ineligible for an offer of model-based support, absent a further waiver of the 90 Percent Rule.

[10] Source: USAC 2014 Quarterly Federal Universal Service Support Mechanisms Fund Size Projections, Appendix HC-01.

[11] Source: USAC 2015 Quarterly Federal Universal Service Support Mechanisms Fund Size Projections, Appendix HC-01.

[12] *See* Public Notice, "Wireline Competition Bureau Announces Implementation of the Budget Control Mechanism for Rate-of-Return Carriers," DA 16-736 (rel. June 29, 2016), n.2 (*citing* USAC, Budget Control Analysis for Rate-of-Return Carriers, http://www.usac.org/hc/programrequirements/budget-control-rate-of-return.aspx) (showing adjusted support for the second half of 2016 of $4,664,925 for Shawnee Telephone and $314,707 for MITC, an annualized total for both companies of $10.0 million).

[13] *See* Public Notice, WC Docket No. 10-90, "Wireline Competition Bureau Releases Additional Illustrative Results for Alternative Connect America Cost Model Version 2.1 For Potential Use in Rate-of-Return Areas," DA 16-164 (rel. Feb. 17, 2016) at Attachment: "CAF – A-CAM 2.1 – Report Version 5.0." *See also* Public Notice, WC Docket No. 10-90, "Wireline Competition Bureau Releases Alternative Connect America Cost Model

Model Report Version	FTTP CB's Eligible for Support	Carrier	Locations Supported	Annual Model-Based Support	Combined Company Total
4.1	Yes	Shawnee Telephone	4,753	$7,105,304	**$7,438,418**
		MITC	418	$333,114	
4.2	No	Shawnee Telephone	809	$1,584,999	**$1,918,113**
		MITC	418	$333,114	

The Petitioners have also calculated their support levels under A-CAM version 2.1 Report Version 5.1, using a $200 support limit and a 9.75 percent cost of money, as adopted by the Commission in the *CAF Rate-of-Return Order*; even using those higher parameters, the A-CAM creates a similarly significant support decrease down to $7.82 million.[14] The Petitioners request that its model-based support be set at $7.82 million, based on the same support limit adopted for other Rate of Return Carriers electing the model.

Request for Waiver

The FTTP Rule has the effect of reducing Shawnee Telephone's A-CAM support levels below a sustainable level and, absent a waiver, will effectively prevent Shawnee Telephone from choosing that option. Similarly, despite the fact that MITC would see its high-cost support decline significantly under the A-CAM, the 90 Percent Rule may

Version 2.1 and Illustrative Results for Potential Use in Rate-of-Return Areas," DA 15-1431 (rel. Dec. 17, 2015) at Attachment: "CAF – A-CAM 2.1 – Report Version 4.0."

[14] This support amount was estimated by Solution Set SSACAM20160205v21ACF975 with a support cap of $200.

prevent it from receiving an offer of model-based support at all.[15] Accordingly, the Petitioners hereby seek a waiver of those rules, as reflected in paragraphs 56 and 66 of the *CAF Rate-of-Return Order.*

The Petitioners support the Commission's efforts to move beyond the legacy incentives of rate-of-return ratemaking, and agree that incentive-based mechanisms create public interest benefits for service providers and customers alike. As compared to CAF-BLS, the A-CAM has great appeal for Shawnee Telephone and MITC, owing to its predictability, simplicity of administration, and incentive-based approach. In order to secure these benefits Shawnee Telephone and MITC would be willing to accept the reduced high-cost support produced by the forward-looking A-CAM approach, with its attendant shift to a more efficient, incentive-based regulation.

Discussion

The Commission may waive its rules for "good cause shown."[16] More specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.[17] In making this analysis, the Commission may take into account

[15] If the Commission were to waive only the FTTP Rule, the 90 Percent Rule would preclude MITC, on a standalone basis from receiving an offer of model-based support. Based on the A-CAM 2.2 Report 6.3, 99.8% of MITC's locations are served by at least 10/1 broadband, far surpassing the 90% limit imposed by the rule.

[16] 47 C.F.R. § 1.3.

[17] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.[18] This request amply meets that standard.

A. Special Circumstances Warrant a Deviation from the General Rule

Special circumstances warrant the requested deviation from the FTTP Rule. *First*, given the Petitioners' circumstances, these waivers would undoubtedly create "more effective implementation of overall policy"[19] by better serving the Commission's intended purpose than the rules themselves, because it would create immediate, predictable savings for the model-based mechanism. Specifically, the Commission has allocated an additional $150 million annually to provide additional funding for carriers electing the model where model-based support exceeds the legacy level.[20] The original proponents of the FTTP Rule offered it as a means to ensure that the additional funds provided by the Commission to rate-of-return carriers electing model-based support would be directed to areas that have not yet been built out, rather than to those where FTTP already exists.[21] In this case, because the Petitioners are willing to elect model-

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[18] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[19] *WAIT Radio*, 418 F.2d at 1159.

[20] *CAF Rate-of-Return Order* at ¶ 60.

[21] *See* Letter from Cheryl L. Parrino, Parrino Strategic Consulting, on behalf of the Nebraska Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 (filed Jan. 14, 2016), Attachment at 2 ("Funding of already well-served locations diverts limited model budget away from unserved customers and creates a mismatch between model support and historical recovery."); Letter from Genevieve Morelli, President, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 19, 2015) at 3 ("We discussed how the build-out obligations for companies participating in the model-based plan would be set and discussed whether and how the current broadband build-out level of a participating company should be taken into account in determining participation in the plan. We discussed the consistency of that approach with the Commission's goal to use limited USF support dollars to bring broadband to the greatest number of currently unserved consumers in RoR areas.") ("*ITTA Nov. 15, 2015 Letter*").

based support that is *less* than their current level of legacy high-cost support, they will not receive any of the $150 million in additional funding that has been budgeted by the Commission.

To the contrary, other rate-of-return carriers electing the model that have not yet deployed 10/1 broadband will benefit from the legacy support the Petitioners would forego. This is so because, as the Commission has explained:

> Once the carriers indicate their interest, the Bureau will total the amount of model-based support for electing carriers *and determine the extent to which, in the aggregate, their model-based support plus transition payments exceed the total legacy support received for 2015 by that subset of rate-of-return carriers.* If that increase is $150 million or less, no adjustment to the offered support amounts or deployment obligations will be necessary, we will not lower the $200 per location funding cap, and those carriers that indicated their interest will be deemed to have elected the voluntary path to the model.[22]

If the Petitioners – for whom the difference between legacy and model-based support is negative – were to be included in the group of carriers electing model-based support, their presence would create additional room within the budget for increases to other model-electing carriers.

In contrast, under the framework adopted in the *CAF Rate-of-Return Order*, Shawnee Telephone and MITC will be forced to use the CAF-BLS mechanism, either because they do not qualify for an offer of model-based support, or because the A-CAM, under the limitations adopted by the Commission, produces support amounts that are simply unsustainably low.[23]

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[22] *CAF Rate-of-Return Order* at ¶ 62.

[23] Under the process laid out in the *CAF Rate-of-Return Order*, rate-of-return carriers are required to elect on a statewide basis whether to accept support based on the A-CAM, or to continue to receive legacy support under the CAF-BLS alternative. *CAF Rate-of-Return Order*

Second, while most rate-of-return carriers that accept an offer of model-based support are likely to do so based on an increase in their high-cost support levels, Shawnee Telephone and MITC would experience a decrease in support under the A-CAM, even if these waivers are granted. Therefore, these waivers will not produce any windfall for the Petitioners (which was the FCC's primary reason for excluding FTTP census blocks), nor will it "lock in" high levels of legacy support for the Petitioners based on sunk investment in broadband-enabled networks. Rather, these waivers would merely clear the way for them to accept a reduction in support that, while significant, is manageable within the context of the other benefits of the incentive-based A-CAM approach. In the absence of this waiver, the Petitioners will remain under CAF-BLS and retain support under legacy mechanisms that remain closer to historical levels.

Third, having largely completed its buildout of FTTP technology to customers throughout its service area, Shawnee Telephone is among the rate-of-return carriers most greatly and adversely affected by the Commission's decision to exclude census blocks served via FTTP from the A-CAM support calculation. In the Commission's illustrative A-CAM results that include census blocks served by FTTP, the Petitioners' annual support would drop by some 30 percent from 2015 legacy levels, from a project amount of $10.5 million to $7.82 million.[24] While this is a significant reduction, it is dwarfed by

at ¶ 65. As indicated above, it is not clear how the Commission intends to apply the 90 Percent Rule and the statewide election requirement in the case of Shawnee Telephone and MITC, which became affiliates in Illinois after the Commission released the *CAF Rate-of-Return Order*, but before offers of support have been made.

[24] Based on A-CAM Solution Set SSACAM20160205v21ACF975 with a $200 upper support cap.

the analogous A-CAM illustrative results that exclude census blocks served by FTTP, which results in an 86 percent reduction in annual support, to just over $1.5 million.[25] In either case, however, the A-CAM mechanism would reduce the Petitioners' support from the levels that prevail under the CAF-BLS, better serving the Commission's objective to redirect support to areas where it is most needed.

In sum, the Petitioners would rather accept the predictability and administrative simplicity of the incentive-based A-CAM mechanism, even in the face of a significant, but manageable reduction in support, than to incur the administrative burden and expense of the complicated CAF-BLS cost accounting and reporting mandates.[26] But, the reduction in support under the A-CAM mechanism as a result of the FTTP Rule, and their potential ineligibility for an offer of model-based support under the 90 Percent Rule, are likely to preclude their ability to make that election.

B. Waivers of the FTTP Rule and the 90 Percent Rule for the Petitioners Would Serve the Public Interest

The Commission had sound public policy reasons for adopting the FTTP Rule and the 90 Percent Rule but, in this case, the Commission's goals would be better served by a waiver. In particular, a waiver will better serve the Commission's broad public interest

[25] Because MITC has not deployed FTTP technology, its support calculations are unaffected by the FTTP Rule. Nevertheless, depending on the Commission's approach, because rate-of-return carriers are required to make a statewide election, and because it is now affiliated with Shawnee Telephone, these waivers also may affect its eligibility and ability to elect support under the A-CAM.

[26] *Cf. Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54 (rel. May 2, 2016), at ¶ 271 (discussing the importance of regulatory mechanisms that are "simple to administer" and seeking comment on the "commercial practicalities and administrative feasibility" of various frameworks for regulating business data services).

goals of catalyzing the transition from rate-of-return ratemaking to incentive-based regulation, and redirecting federal high cost universal service support to those areas where it can produce the greatest broadband benefits.

In the *Transformation Order*, the Commission sought to "eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs," by "lay[ing] the foundation for subsequent Commission action that will set rate-of-return companies on a path toward a more incentive-based form of regulation."[27] To begin that process, the Commission imposed limits on capital and operating costs, corporate operations expenses, and other items,[28] and those limits have now been incorporated into the CAF-BLS mechanism.[29] The A-CAM, as a forward-looking cost model, represents the next logical step in that progression.

Indeed, the A-CAM process built on a long history. As early as 1997, that Commission recognized the benefits of setting high-cost universal service support amounts on a forward-looking, incentive basis, stating that, "the 1996 Act's mandate to foster competition in the provision of telecommunications services in all areas of the country and the principle of competitive neutrality compel us to implement support mechanisms that will send accurate market signals to competitors. We find that the

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27 *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶¶ 195 (2011) (subsequent history omitted).

28 *Id.*

29 *E.g., CAF Rate-of-Return Order* at ¶¶ 95-115.

current support mechanisms neither ensure that ILECs are operating efficiently nor encourage them to do so."[30]

The Petitioners agree that incentive-based regulation increases the efficiency with which service providers deliver their service, in contrast to legacy rate-of-return incentives.[31] These Petitioners have always tried to operate their businesses as efficiently as possible, and wish to capture the incentive-based efficiencies on which the model-based mechanism is based. In this case, however, a waiver of the FTTP Rule and the 90 Percent Rule would best enable Shawnee Telephone and MITC to elect incentive-based support under the A-CAM, consonant with their philosophical predisposition to do so.

The incremental public interest benefits associated with the election of incentive-based regulation by these two carriers, in this case, are twinned with the public interest benefits of redirecting ongoing federal high cost support under the A-CAM from areas where FTTP technology already provides robust broadband to areas where broadband is unavailable. This is so, because the Petitioners would receive less support under the model-based mechanism.

The Commission explained its decision to adopt the FTTP Rule as follows:

> While we recognize that these deployed census blocks require ongoing funding both to maintain existing service and in some cases to repay loans incurred to complete network deployments, we conclude that it is appropriate to make this adjustment to the model in order to advance our policy objective of advancing broadband deployment to unserved customers. Our decision to exclude from support calculations this subset of census blocks in no way

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30 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (1997), at ¶ 292 (subsequent history omitted) ("*First Universal Service Order*").

31 *See, e.g., ITTA Nov. 15, 2015 Letter* at 3 (discussing "race to the top" incentives created by rate-of-return regulation and support mechanisms).

> indicates a belief that once networks are deployed, they no longer require support; rather, we assume that the carriers that have already deployed FTTP or cable broadband have done so within the existing legacy support framework. ***They will continue to receive HCLS and support through the reformed ICLS mechanism, and thus there is no need for a new mechanism to support their existing deployment. Those carriers are not required to elect model-based support and therefore this decision does not drastically reduce their support, as some allege***.[32]

In this context, the Commission's conclusion that "carriers are not required to elect model-based support and therefore this decision does not drastically reduce their support"[33] is beside the point. The Petitioners are willing to accept a reduction in support as compared to the CAF-BLS option, in exchange for the predictability and administrative simplicity of the more incentive-based A-CAM mechanism, as long as the support levels it produces are sufficient. And, the Commission has long recognized that a transition to incentive regulation, including forward-looking model-based federal support is in the public interest.[34]

A grant of these waivers, in contrast, would produce a smaller – but still substantial – reduction in the Petitioners' model-based high cost support. But, because that more modest reduction is one that the Petitioners can accept, it is the best and most expedient way for the Commission to achieve its goal of reallocating a portion of the

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[32] *CAF Rate-of-Return Order* at ¶ 56 (emphasis supplied).

[33] *CAF Rate of Return Order at* ¶ 62.

[34] *See First Universal Service Order* at ¶¶ 224-25 ("We concur with the Joint Board's finding that the use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation . . . We agree with the Joint Board that the use of forward-looking economic cost will lead to support mechanisms that will ensure that universal service support corresponds to the cost of providing the supported services, and thus, will preserve and advance universal service and encourage efficiency because support levels will be based on the costs of an efficient carrier.").

Petitioners' high-cost support to areas that are currently unserved. While the A-CAM mechanism as adopted by the Commission produces a greater reduction in support from legacy levels, the benefits are illusory. The reduction is too great for Shawnee Telephone and MITC to accept, and therefore will not realize the expeditious reallocation of support the Commission hoped to achieve.

Similarly, the Commission's goal to ensure that the additional $150 million in support is not directed to those areas already with FTTP would be better served by a waiver. With these waivers, as discussed above, the difference between the Petitioners' current support and the (lower) level of model-based support they are willing to accept would become available to other model-electing rate-of-return carriers.[35] Thus, the particular facts presented here make a waiver, rather than strict compliance, more consistent with the public interest.

Absent a waiver, the Petitioners would retain CAF-BLS at their legacy levels. In contrast to the A-CAM, the CAF-BLS mechanism is burdensome, requiring an increase in cost accounting, recordkeeping, and reporting, even from the legacy high cost mechanisms. In the absence of these waivers, the Petitioners would miss out on the predictability, simplicity of administration, and other benefits of moving towards incentive regulation. Both the National Exchange Carrier Association ("NECA") and industry cost consultants have highlighted these additional obligations, including

[35] As explained in the *CAF Rate of Return Order*, at ¶ 62, to the extent that sum of the model-based support of all electing companies exceeds the sum of legacy support plus the additional support of $150 million, the support to individual companies will be reduced to stay within the budget. The difference between the Petitioners' model-based support and legacy support may be used to mitigate this impact.

additional required cost studies, operating expense tracking, capital investment limits, cost allocation and affiliate transaction rules, and reporting obligations.[36]

As the Commission recognized, areas where broadband has already been built-out have an ongoing need for federal high-cost support. Not only must Shawnee Telephone maintain the financial resources to repay its RUS and BIP loans, but the A-CAM's illustrative support results, with FTTP-served census blocks included, show objectively that the Petitioners serve customers in high cost areas.

For similar reasons, the Commission should waive the 90 Percent Rule. The Commission reasoned that this rule would "preserve the benefits of the model for those companies that have more significant work to do to extend broadband to unserved consumers in high-cost areas, and will prevent companies from electing model-based support merely to lock in existing support amounts."[37] But, here, Petitioners are not trying to "lock in" existing support amounts; the model would produce substantially lower high-cost support levels for the Petitioners, even if the Commission grants these waivers. And, their election of model-based support would, accordingly, free up additional funds immediately to flow to other model-electing carriers.

Thus, by granting these waivers and thereby allowing the Petitioners to receive an offer of model-based support at a sustainable level – but still lower than their legacy level that will otherwise continue under CAF-BLS – the Commission can effectuate a

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[36] For example, the expectations of the expanded reporting and compliance requirements were discussed at the 2016 Management Seminar presented by John Starulakis, Inc. in May and a NECA conference call for Industry Consultants and Select Member Companies on April 28th.

[37] *Id.* at ¶ 66.

predictable and immediate overall reduction in the Petitioners' demand for high-cost support. This reduction, in turn, will better achieve its goal of "preserving the benefits of the model for those companies that have more significant work to do," not to mention those electing the CAF-BLS that may soon feel the constraints of the Commission's rate-of-return support budget.

Indeed, the Commission should leap at the opportunity to reduce overall rate-of-return carrier demand for high-cost support. As the *CAF Rate-of-Return Order* recognizes, "NECA forecasts that over the next several years, absent any further reforms, total high-cost support (that is, the sum of HCLS, ICLS, and CAF ICC) for the rate-of-return industry will exceed the $2 billion budget."[38] It is possible that the Commission's budget control mechanism[39] may operate to reduce Petitioners' support over time, as demand grows from other rate-of-return carriers that make new broadband investments under CAF-BLS. But these waivers will free up a portion of the Petitioners' support immediately, through the voluntary acts of the Petitioners in electing A-CAM-based support. In this case, other model-electing rate-of-return carriers would benefit immediately from including two carriers whose support would decrease under the A-CAM among their number.

Finally, the Commission's *CAF Rate-of-Return Order* sought to create a model-based support mechanism that would attract rate-of-return carriers to elect this form of

[38] *Id.* at ¶ 147.

[39] *Id.* at ¶ 150.

incentive regulation.[40] For that reason, the Commission articulated a distinct preference for carriers to accept the voluntary path to the model offered in the Order, and offered the financial incentive of "up to an additional $150 million annually from existing high-cost reserves to facilitate this voluntary path to the model."[41] The Commission explained that, "[b]y making this funding available to those carriers that are willing to meet concrete and defined broadband deployment obligations, *including those who will see reductions in their support*, we will advance our objective of extending broadband to currently unserved consumers."[42] This waiver will make it possible for the Petitioners to accept A-CAM support, even though they will experience a reduction in support, thereby making additional support available for rate-of-return carriers to advance the Commission's goal to extend broadband to currently unserved customers, in a way that will not otherwise occur. At the same time the petitioners will be bound by the adopted deployment timelines ensuring that those areas served by the Petitioners that do not yet have broadband service at the Commission defined levels will receive it during the CAF Phase II period.

[40] *Id.* at ¶ 4 (citing "Commission's longstanding objective of adopting fiscally responsible, accountable and incentive-based policies to replace outdated rules and programs").

[41] *Id.* at ¶¶ 4, 60.

[42] *Id.* at ¶ 60.

Conclusion

For the foregoing reasons, the Petitioners respectfully request that the Commission waive the FTTP Rule and the 90 Percent Rule, as set forth in Paragraphs 56 and 66 of the *CAF Rate-of-Return Order*, as described in this Petition, so that they may receive and accept an offer of model-based support under the A-CAM.

Respectfully submitted,

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